

立法會
Legislative Council

LC Paper No. CB(2)207/12-13(04)

Ref : CB2/PL/MP

Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 November 2012**

Statutory minimum wage rate

Purpose

This paper highlights the major concerns and views of the Legislative Council ("LegCo") Members on the subject of statutory minimum wage ("SMW") rate in the Fourth LegCo.

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO"), enacted on 17 July 2010, seeks to establish a SMW regime. Section 16 of MWO provides that the Chief Executive ("CE") in Council may, by notice published in the Gazette, amend Schedule 3 to specify the SMW rate and its effective date. The Provisional Minimum Wage Commission ("PMWC"), comprising members from the labour, business and academic sectors as well as public officers, was set up in February 2009 to advise the Administration on the appropriate level of the initial SMW rate. PMWC submitted its report in October 2010 and recommended that the initial SMW rate should be set at \$28 per hour.

3. On 12 November 2010, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, the Minimum Wage Ordinance (Commencement) Notice 2010, the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010. These four pieces of subsidiary legislation are made to specify the initial SMW rate of \$28 per hour and the monetary cap of \$11,500 per month below which records are required to be kept on the hours worked by employees, and to appoint 1 May 2011 as the date for commencement of MWO.

4. The Minimum Wage Commission ("MWC") is an independent statutory body established under Part 3 of MWO and is tasked to report to the CE in Council on its recommendation about the SMW rate at least once in every two years. MWC will submit its recommendation report on the SMW rate by the end of October 2012 at the latest.

5. On 22 March 2012, MWC was briefed on the survey results of the 2011 Annual Earnings and Hours Survey ("AEHS") released by the Census and Statistics Department ("C&SD"). As the reference period of the 2011 AEHS was May to June 2011, it reflected the wage distribution of employees after the implementation of SMW, which came into effect on 1 May 2011. According to the survey results of the 2011 AEHS, the lower quartile, median and upper quartile of the hourly wage of employees in Hong Kong in May to June 2011 were \$36.0, \$52.4 and \$82.5 respectively. MWC commenced an eight-week public consultation exercise to invite views on the SMW rate until 28 May 2012.

Past discussions by Members

6. In the course of deliberations on the Minimum Wage Bill and the four pieces of subsidiary legislation relating to SMW referred in paragraph 3 above, the Bills Committee on Minimum Wage Bill ("the Bills Committee") and the Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage ("the Subcommittee"), had discussed, among other things, issues relating to the SMW rate. The Panel on Manpower ("the Panel") had discussed issues relating to the implementation of the initial SMW rate at several meetings. The major concerns of members are summarized in the ensuing paragraphs.

Criteria and methodology for setting the SMW rate

7. In response to the query of the Bills Committee about the methodology for setting the initial SMW rate, the Administration advised that the Minimum Wage Bill sought to establish a SMW regime which would provide a wage floor to forestall excessively low wages but without unduly jeopardizing the labour market flexibility and economic competitiveness and without causing significant adverse impact on the employment opportunities for vulnerable employees. MWC would adopt an evidence-based approach to setting and reviewing the SMW rate through data research and analysis as well as extensive consultations with stakeholders. MWC would take into account a basket of social, economic and employment indicators that were relevant to, or affected by, the SMW level.

Factors taken into account by PMWC in its deliberation of the initial SMW rate

8. Concern was raised that while the initial SMW rate was to be implemented on 1 May 2011, the SMW rate had been recommended by PMWC by reference to the wage data collected in the 2009 AEHS.

9. According to the Administration, there was inevitably a time lag between data collection and availability of the statistics. In recognition of this limitation, PMWC had already taken into account relevant indicators with more up-to-date data sources, especially with regard to business operating conditions and the latest wage trend, as well as the latest inflation and economic forecasts.

10. The Administration also advised that PMWC had identified a basket of indicators after taking into account the views of stakeholders, experience of other places and the socio-economic circumstances of Hong Kong. The basket of indicators included general economic conditions, labour market conditions, competitiveness and standard of living. As some implications of SMW would be either qualitative or could be measured only after the implementation of SMW, PMWC had also taken into account other relevant considerations, such as enhancing social harmony, enhancing work incentive, enhancing quality of life, raising purchasing power and other potential chain effects.

11. Another concern was raised as to whether PMWC had taken into account the inflation forecast for the period up to 1 May 2011 in conducting impact assessment of the initial SMW rate. The Administration advised that inflation was one of the important considerations of PMWC in deliberating the initial SMW rate. During the deliberation and in conducting impact assessment, PMWC had not only taken into account the latest inflation situation but also the inflation forecast, in recognition of the time lag in annual statistics as well as the inevitable time lag between the submission of the recommendation on the initial SMW rate and the date of its implementation.

Factors to be taken into account by MWC in its review of the SMW rate

12. Some members were concerned about the statistical data to be considered by MWC in its review of the SMW rate. The Administration advised that as specified in MWO, in the review of the SMW rate, MWC must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs and to sustain Hong Kong's economic growth and competitiveness. Various statistical data including the wage data collected through AEHS and the operating characteristics of business through other surveys conducted by C&SD would be available for MWC's consideration. Surveys on the impact of SMW,

in particular, on vulnerable workers, low paying sectors and small and medium enterprises would also be conducted.

13. There was a view that as depreciation was a significant cost element especially in the catering industry, it should be taken into account in determining the SMW rate. The Administration advised that C&SD would gather more information on depreciation in its future collection of data relating to the operating cost of enterprises.

14. At its meeting on 29 May 2012, the Panel noted from the Administration that MWC conducted its first-round consultation meetings with 105 stakeholder groups in the fourth quarter of 2011 to gauge the views and concerns on the preliminary impact of the implementation of the initial SMW as well as on the SMW rate. The participating stakeholders included major trade unions, major employers' associations, associations of small and medium enterprises, associations of low-paying sectors, other trade/professional associations, labour policy concern groups, and think tanks/policy research institutes. Following the public consultation launched by MWC from 2 April to 28 May 2012 to share with members of the public and stakeholders the preliminary views of MWC on the study of the SMW rate, and invite submissions from members of the public and stakeholders on the SMW rate, MWC conducted its second-round consultation meetings with stakeholders in June 2012 to listen to their further views on the SMW rate.

15. Noting members' concern about the factors taken into account in assessing the SMW rate, the Administration affirmed that all relevant data and information as well as views from various sectors of society would be studied in detail in reviewing the SMW rate before making a decision on whether adjustment to the SMW rate was needed. These included the estimated increases in wages of employees involved and in wage bill of enterprises analyzed by sector at different SMW test levels as well as the operating characteristics of enterprises analyzed by sector.

Impact of the initial SMW rate

16. As advised by the Administration, the chain effects arising from the interactions of the reaction of different parties to SMW could only be ascertained some time after the implementation of SMW. Given the limitations and constraints arising from the lack of experience and empirical evidence guiding the setting of the appropriate initial SMW rate, the actual impact of SMW could only be identified and assessed over a longer period of time through dedicated studies after the implementation of SMW. To facilitate future reviews of the SMW rate, survey and research studies would be

conducted to monitor and evaluate the actual impact of SMW, in particular, on vulnerable workers, enterprises in the low paying sectors and small and medium enterprises, and also with special reference to the changes in detailed pay hierarchy to facilitate an in-depth examination of possible knock-on effects.

17. Members had time and again sought information on the estimated period of time through which the ripple effect of SMW would sustain. There was a view that the Administration should take into account the ripple effect generated by the implementation of SMW in various industries in assessing the precise impact of SMW. Moreover, the Administration should commission a tertiary institution to conduct a "tracking study" on employers and employees, so as to monitor the empirical magnitude of knock-on effects after the implementation of SMW.

18. The Administration advised that as the introduction of SMW was expected to lead to a series of chain reactions or ripple effects, PMWC had recommended conducting tracking studies for low-paying sectors with special reference to the retail and restaurant trades to monitor the empirical magnitude of knock-on effects after the implementation of SMW. According to the Administration, the labour market had tightened up in 2011, due to the buoyant demand for labour along with the economic upturn. The seasonally adjusted unemployment rate was 3.4% in the first quarter of 2012. This would have direct impact on the wages and incomes across all segments of the workforce. The Labour Department had commissioned a consultancy to conduct a study targeting employees working in the catering and the retail trade industries, for the purpose of assessing the impact of the implementation of SMW on employees in these two selected sectors including its effect on pay hierarchy and the likely impact of knock-on effect. To ensure the objectivity of the study, a sample of about 1 000 business undertakings was selected for the survey. The findings of the consultancy study were expected to be available in mid 2012, which would be provided to MWC for reference, once available.

Timing for and future reviews of the SMW rate

19. Some members were of the view that the SMW rate should be reviewed annually. They considered that the review of the initial SMW rate should commence as soon as possible so that the second SMW rate could be implemented in the first half of 2012. At its meeting on 30 November 2010, the Subcommittee passed a motion calling on the Administration to initiate a review based on 2010 AEHS and implement the second SMW rate in the first half of 2012. Similar concern was raised by the Panel again when issues relating to the SMW rate were discussed.

20. The Administration advised that MWO specified the frequency of at least once in every two years, without precluding more frequent rate review if this was appropriate and necessary. The SMW rate would be deliberated in line with the evidence-based approach, and apart from the wage statistics compiled by C&SD, MWC would take into account a basket of indicators, supplementary statistical data and other relevant considerations when studying the SMW rate. With the provisions on MWC coming into effect on 12 November 2010, a report on the SMW rate had to be made by MWC before mid-November 2012. In line with the evidence-based approach, the situation would be closely monitored with a view to conducting a review of the SMW rate at an appropriate time. More detailed statistical data would be collected so as to ascertain and verify the impact assessment of the implementation of SMW. Given the high degree of external orientation of Hong Kong's economy with a linked exchange rate system, it was important to ensure that the SMW rate would not have significant adverse impact on the employment opportunities of the vulnerable employees or unduly jeopardize the labour market flexibility and economic competitiveness of Hong Kong.

21. Noting a time lag of about six months between the announcement of the initial SMW rate and its implementation, some members were concerned whether there would also be a six-month time lag in the implementation of future SMW rates. Concern was also raised as to whether the time required for the compilation of statistics concerning AEHS and the General Household Survey could be compressed, so that the implementation of future SMW rate could be advanced.

22. The Administration explained that C&SD normally required eight months for completion of data analysis, which was broadly comparable with that of overseas countries such as the United Kingdom and Australia. Noting members' concern about the time lag, the Administration would strive to speed up the process. Members were further advised that time was needed for the drawing up of general guidelines for employers and employees, the industry-specific guidelines, and publicity on the implementation of SMW. Some establishments would also need time to review and, if necessary, revise their business service contracts.

Meal breaks and rest days

23. According to the Administration, neither MWO nor the Employment Ordinance (Cap. 57) ("EO") prescribed that meal breaks or rest days should be with pay or otherwise. These matters had all along been subject to the agreement between employers and employees having regard to the circumstances of individual enterprises and operational needs. MWO

stipulated the circumstances under which meal breaks should constitute hours worked for the purpose of computing SMW: if an employee was, during his meal break, in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the employer, such time should be included in the hours worked by the employee for computing SMW, irrespective of whether he was provided with work or not. If meal breaks were regarded as working hours of the employee according to his employment contract or agreement with his employer, such hours should also be taken into account in computing SMW.

Recent development

24. At its meeting on 29 May 2012, the Panel noted that some deputations who represented the employer's side considered that the prevailing SMW rate of \$28 per hour should be frozen. In view of the high inflation over the past two years (in particular the rising food prices), some members, however, stressed that there was a need to set the next SMW rate at a higher level, say, in the range of \$31 to \$33, so as to achieve the policy objective of protecting the basic living of workers.

25. The Administration advised that the review of the SMW rate was underway. MWC had yet to recommend whether the SMW rate should be adjusted. MWC would submit to the CE in Council its recommendation report on the SMW rate by the end of October 2012 at the latest. According to section 14 of MWO, CE must, as soon as practicable after receiving a report made under section 12, cause a copy of it to be published. The Administration stressed that it did not have any stance on the next SMW rate which was to be recommended by MWC.

26. MWC issued a press release on 25 September 2012 advising that it had reached consensus on the recommended SMW rate after considering prudently and conducting detailed analysis and assessment on the basis of relevant statistical data and information as well as views of members of the public and stakeholders. MWC would submit a recommendation report to CE in Council on or before 31 October 2012.

Relevant papers

27. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
14 November 2012

**Relevant papers on
the statutory minimum wage rate**

Committee	Date of meeting	Paper
Panel on Manpower	23.3.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
Bills Committee on Minimum Wage Bill	---	<u>Report</u>
Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage	---	<u>Report</u>
Panel on Manpower	17.3.2011 (Items V and VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	12.4.2012 (Item V)	<u>Agenda</u>
Panel on Manpower	29.5.2012 (Item I)	<u>Agenda</u> <u>Minutes</u>